



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: Methyl Tertiary	:	
Butyl Ether ("MTBE")	:	Master File C.A. No.
Products Liability Litigation	:	1:00-1898
	:	MDL 1358 (SAS)

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This document pertains to: :

City of New York v. :  
Amerada Hess, et al., :

No. 04 Civ. 3417 :

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PITMAN, United States Magistrate Judge:

The following constitutes my rulings on the objections, other than relevance, to the excerpts of the deposition testimony of Robert P. Larkins, Jack Spell and Carl Venzke designated by the parties to be offered in this matter. All relevance objections will be resolved by Judge Scheindlin at trial. Defendants' Joint Motion in Limine to Preclude Plaintiff from Introducing Evidence or Argument (1) Relating to Non-Parties against Defendants; or (2) Relating Only to One Defendants against Multiple Defendants raises a relevance objection, and, therefore, will be addressed by Judge Scheindlin at trial.<sup>1</sup>

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<sup>1</sup>Both Magistrate Judges Francis and Gorenstein agree that Defendants' Joint Motion in Limine raises a relevance objection that should be addressed by Judge Scheindlin.

This Order constitutes my rulings on all objections asserted in response to the designated testimony, regardless of whether an objection is referenced in the explanations provided.

**Larkins, Robert P.**

**07-11-00 Session**

27:06-07	Overruled; non-responsiveness objection is available only to the interrogating party.
27:17-23	Overruled; question asks for witness's awareness; no foundation necessary; non-hearsay use.
28:09-17	Overruled; question asks for witness's awareness; no foundation necessary.
32:01-05, 08	Overruled; witness acknowledges facts in question are correct.
35:08-10, 13-14	Overruled; witness acknowledges facts in question are correct.
35:14-16	Overruled; necessary to complete witness's answer.
46:08-12, 15-16	Overruled; remedy for alleged mischaracterization is cross-examination.
46:17-23	Overruled; necessary to complete witness's answer.
51:05-08, 11-13	Overruled; no foundation necessary; existence of facts is established by witness's answer.
63:15-18, 22-25	Sustained; question incomprehensible; witness states he does not understand question.
64:01-04	Sustained; question incomprehensible; witness states he does not understand question.
65:17 - 66:07	Overruled; witness acknowledges facts in question are correct.

71:18-24 Overruled; question asks for witness's knowledge at a particular point in time; no foundation necessary.

74:02-10 Overruled; non-responsiveness objection is available only to the interrogating party.

75:02-17 Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.

76:03-16 Sustained as to lines 3-11; witness denies having recollection. Overruled as to balance of testimony; witness acknowledges facts in question are correct.

110:10 - 111:08 Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.

124:09 - 125:05 Overruled; non-responsiveness objection is available only to the interrogating party; answer is not unduly narrative.

**03-06-08 Session**

21:14 - 22:12 Relevance objections will be addressed at trial.

84:03-23 Sustained; part of testimony is hearsay and part is based on documents witness admits he's never seen before.

80:01-07 Sustained; a witness's reading from a document that is in evidence has no probative value.

92:13-17 All objections other than relevance overruled; relevance objections will be addressed at trial.

92:18 - 93:7 All objections other than relevance overruled; relevance objections will be addressed at trial.

93:09 - 94:04	Overruled; non-responsiveness objection is available only to the interrogating party; answer is not unduly narrative.
99:02-16	All objections other than relevance overruled; relevance objections will be addressed at trial; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
115:13-20	Sustained; leading.
125:6-17	Overruled; questions need no foundation.
125:18 - 126:09	Overruled; non-responsiveness objection is available only to the interrogating party.
128:08-23	Sustained as to lines 8 to 10; overruled as to the balance of the testimony. Testimony at lines 8 to 10 is expressly based on the witness's assumption.
131:01 - 132:02	Sustained; counsel cannot authenticate documents.
132:04 - 135:13	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience; answer is not narrative.
137:08 - 139:22	Overruled; any issue concerning the witness's knowledge should have been resolved through voir dire or cross-examination; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
141:07 - 143:14	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience; answer is not narrative.
143:18 - 146:10	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience; answer is not narrative.

146:13 - 150:24	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience; answer is not narrative.
151:03 - 152:21	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
165:11 - 167:04	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
170:12-22	Relevance objections will be addressed at trial.
174:03 - 175:14	Conditionally overruled; objections are without merit if document is received in evidence.
175:17 - 176:14	Conditionally overruled; objections are without merit if document is received in evidence.
188:12-21	Overruled; remedy for alleged mischaracterization is re-direct examination.
196:17-24	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
197:07 - 198:02	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
200:8-12	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
200:21 - 201:15	Overruled.
201:16 - 202:04	Sustained; argumentative.
202:15 - 17	Overruled; non-responsiveness objection is available only to the interrogating party.
205:15-20	Overruled; witness acknowledges facts in question are correct.



210:03-17	Sustained; argumentative.
211:20 - 212:16	Overruled; any inaccuracy in the question is corrected in the witness's answer.
216:16 - 217:05	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
218:02-15	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
220:19 - 221:12	Overruled; question is not argumentative or narrative; non-responsiveness objection is available only to the interrogating party.
224:04-21	Overruled; question does not assume facts.
224:22 - 225:08	Overruled; question is not argumentative; no foundation is necessary.
248:4-12	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
251:15 - 252:04	Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
255:11-20	Sustained; asking a witness what words are on a document has no probative value; balance of answer is speculative.
263:07-13	Sustained; the witness's negative response to the leading question has no probative value; questions are not evidence.
273:17 - 274:11	Overruled; question does not call for improper narrative; non-responsiveness objection is available only to the interrogating party; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
276:01-08	Sustained; the witness's negative response to the leading question has no probative value; questions are not evidence.

**03-07-08 Session**

360:17 - 361:04	Overruled through the word "ethanol" in line 19, sustained as to balance. Testimony after line 19 purports to describe internal mental processes of third parties.
377:24 - 378:13	Overruled; non-responsiveness objection is available only to the interrogating party.
381:14-21	Overruled; no foundation is necessary.
381:22 - 382:04	Overruled; no foundation for the designated testimony is necessary.
407:7-15	Sustained; calls for speculation.
445:23 - 446:11	Sustained; witness denies knowledge; testimony has no probative value.
446:12 - 447:02	Sustained; witness denies knowledge; testimony has no probative value.
447:03-16	Sustained; witness denies knowledge; testimony has no probative value.
462:17 - 463:16	Sustained; witness denies knowledge; testimony has no probative value.
464:04-22	Overruled except as to the sentence beginning "They considered . . . ." on line 18; the objection is sustained as to that sentence; testimony appears to be within the scope of witness's knowledge in light of his education and experience; "[t]hey" is not defined term; witness has no apparent basis to know what "they" considered.
464:24 - 465:15	Overruled; non-responsiveness objection is available only to the interrogating party; testimony appears to be within the scope of witness's knowledge in light of his education and experience.
468:04 - 469:17	Sustained; testimony relates to knowledge of third parties; witness has no apparent basis for knowledge of third parties' mental processes.

489:03-13 Overruled.

**Spell, Jack**

22:20 - 23:04 Overruled; non-responsiveness objection is available only to the interrogating party; answer is only minimally narrative.

28:2-12 Sustained; witness appears to be speculating about facts that prompted a memo authored by another individual ("I would say . . . ")

28:13-23 Overruled; question asks what witness knew by a certain date; no foundation is necessary; question is not hypothetical; remedy for alleged mischaracterization is cross-examination.

38:09-13 Overruled; questions asks for witness's reaction to information he received from another Exxon employee; no foundation is necessary.

38:14-20 Sustained; witness expressly states he is assuming facts he does not know.

38:21 - 39:02 Sustained; answer is speculative.

40:17-23 Overruled; question asks for witness's knowledge at a particular point in time; no foundation is necessary.

61:22 - 62:16 Overruled; question asks witness if he knows of certain facts and he answers directly. Relevance objections will be addressed at trial.

94:11 - 95:04 Sustained; regardless of the admissibility of the "Maine Report" is admissible, asking the witness what the document says has no probative value.

105:2 108:14 Overruled; testimony appears to be within the scope of witness's knowledge in light of his education and experience.



**Venzke, Carl**

**06-08-01 Session**

15:5-20                   Relevance objections will be addressed at trial.

18:17 19:09              Sustained; witness's reading of a document has no probative value. Admissibility of document reserved for trial.

19:11-22                 Relevance objections will be addressed at trial. Hearsay objection overruled; no hearsay testimony or evidence is offered.

20:3-7                   Relevance objections will be addressed at trial.

24:12-22                 Relevance objections will be addressed at trial.

27:16 - 27:20            Relevance objections will be addressed at trial. Objection is otherwise sustained; witness's reading of a document has no probative value. Admissibility of document reserved for trial.

28:2 - 29:08             Relevance objections will be addressed at trial. Objection is otherwise sustained; witness's reading of a document has no probative value. Admissibility of document reserved for trial.

29:11 - 29:17            Relevance objections will be addressed at trial.

**03-09-07 Session**

100:9-20                 Relevance objections will be addressed at trial. Objection is otherwise sustained; witness's acknowledgment that the document says what it says has no probative value. Admissibility of document reserved for trial.

100:21 - 101:2            Relevance objections will be addressed at trial. Hearsay and authentication objections overruled. Question to witness as to when he received a document does not seek hearsay and does not need any foundation.

101:3-5                    Relevance objections will be addressed at trial.

113:21 - 114:10           Sustained; witness's testimony that he does not recognize a document has no probative value.

Dated: New York, New York  
July 21, 2009

SO ORDERED

  
HENRY PITMAN  
United States Magistrate Judge

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